

URS

Dames & Moore

Fax Cover Sheet9801 Westheimer, Suite 500
Houston, Texas 77042Telephone: (713) 914-6699
Fax: (713) 780-7414

TO:

COMPANY:

FAX NUMBER:

Camille

EPA

214-665-6660

CC:

FROM:

K. Hinesley

DIRECT DIAL NO.

713-914-6594

DATE:

AUG. 23, 2000

SUBJECT:

Consent Decree

NUMBER OF PAGES:

9

(INCLUDING COVER SHEET)

MESSAGE:

See Attached

Faxed to provide example of notice
at time of property sale - FBI/a
PCOL, drafted 8/00.

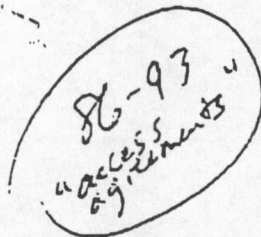
9440252



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APR 20 1995

cc: B. Lucas 4-21-95



April 17, 1995

Calvin B. Reeves

Of Counsel

1601 Elm Street

Suite 1700

Dallas, Texas

75201-7241

214-922-0125

FAX:

214-978-3397

An agency of

The Baptist

General

Convention

of Texas

Direct Dial:

214-978-3314

Mr. Steve Radel
Associate Program Manager
Environmental Group
Beazer East, Inc.
436 Seventh Avenue, Suite 1150
Pittsburgh, Pennsylvania 15219

Re: Sale of 22.505 acres of land comprising a portion of the 66 acre tract of land known as the South Cavalcade Superfund Site, Houston, Harris County, Texas

Dear Steve:

This letter is to advise Beazer East, Inc. ("Beazer") that Baptist Foundation of Texas has completed the sale of the captioned 22.505 acre tract of land to NW Transport Service, Inc.

I attach hereto true and correct copy of Assignment and Assumption of Access Agreement executed by Baptist Foundation of Texas and accepted by NW Transport Service, Inc., under the terms of which NW Transport Service Inc. "... agrees to assume, perform and comply with all of the terms and conditions of the Access Agreement"

Pursuant to Paragraph 22 of the Access Agreement, you are requested to substitute, in lieu of notice to Baptist Foundation of Texas, to henceforth furnish any notices given or required under the Access Agreement to:

NW Transport Service, Inc.
5601 Holly St.
PO Box 5001
Commerce City, Colorado 80037-5001

Attn: Mr. William R. Ward
Senior Vice President and General Counsel
FAX: (303) 289-4649

Should you need further information, please advise.

Sincerely,

Calvin B. Reeves

/rd
attachment

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ASSIGNMENT AND ASSUMPTION OF ACCESS AGREEMENT

THIS AGREEMENT, by and between BAPTIST FOUNDATION OF TEXAS, a Texas non-profit corporation (hereinafter sometimes referred to as "BFT", and sometimes referred to as "Assignor") and NW TRANSPORT SERVICE, INC., (hereinafter referred to as "NW TRANSPORT" and sometimes as "Assignee").

WHEREAS, by Special Warranty Deed of even date herewith, BFT conveyed to NW TRANSPORT that certain 22.505 acre tract of land, being more particularly described by metes and bounds in the attached Exhibit "A", to which reference is here made; and

WHEREAS, the said 22.505 acre tract of land is included within a 66 acre tract of land referred to as the South Cavalcade Superfund Site ("South Cavalcade Site"), which was added to the National Priorities List on June 10, 1986; and

WHEREAS, in Civil Action No. H-90-2406 in the United States District Court for the Southern District of Texas, styled United States of America, on behalf of the Administrator of the United States Environmental Protection Agency, v. Beazer East, Inc., (hereinafter referred to as "Beazer") a Consent Decree was entered by the Court on the 13th day of March, 1991, (herein referred to as "Consent Decree") duly recorded under Film Code No. 110-42-3950 of the Real Property Records, Harris County, Texas, reference to which Consent Decree and the recording thereof is here made for all purposes to the same extent as if such were copied verbatim herein; and

WHEREAS, the Consent Decree covered all of the South Cavalcade Site including the above mentioned 22.505 acre tract of land which was described in the Consent Decree as containing 22.488 acres of land; and

WHEREAS, under Docket Number CERCLA-6-08-92 entitled Administrative Order of Consent entered into between Rex King and Marilyn King, individually and for Palletized Trucking, Inc; Baptist Foundation of Texas; Merchants Fast Motor Lines, Inc.; and Trucking Properties Inc.; RESPONDENTS, and U. S. ENVIRONMENTAL PROTECTION AGENCY, (hereinafter referred to as "EPA") effective July 27, 1992 (hereinafter called "AOC"), duly recorded under Film File Code No. 111-59-2467 of the Real Property Records, Harris County, Texas, copy of which is attached hereto as Exhibit "B", reference to which is here made for all purposes, under the terms of which RESPONDENTS were, among other obligations, to (i) provide access to the Property as provided in Paragraph 25 of the AOC; (ii) cooperate with EPA in the implementation of response actions at the Property as provided in Paragraph 27 of the AOC; (iii) use due care with respect to hazardous substances at the Property and to comply with applicable law as provided in Paragraph 28 of the AOC; and (iv) to notify EPA prior to commencement of any construction of additional improvements that disturb the surface or subsurface of the Property; and

WHEREAS, by instrument entitled Access Agreement, copy of which is attached hereto as Exhibit "C", and made a part hereof for all purposes executed by Rex King and Marilyn Lee King, individually and for Palletized Trucking, Inc. on November 16, 1992, by BFT on November 17, 1992, and by Beazer on January 5, 1993, as amended by Agreement executed by Rex King and Marilyn Lee King, individually and for Palletized Trucking, Inc; BFT; and Beazer, effective January 5, 1993, copy of which is attached hereto as Exhibit "C", reference to which is here made for all purposes, granting to Beazer, its agents, representatives, contractors, subcontractors and

affiliates, access to the South Cavalcade Site; and defining the rights, duties and obligations of Beazer and of the landowners, that is, Rex King and Marilyn Lee King, individually and for Palletized Trucking Inc.; and BFT.

NOW THEREFORE, for and in consideration of the foregoing and for the mutual covenants and conditions herein and as part of the consideration for the herein described transaction, BFT has ASSIGNED, TRANSFERRED, GRANTED AND CONVEYED and by these presents does ASSIGN, TRANSFER, GRANT and CONVEY all of its right, title, interest and estate in, to and under the aforementioned Access Agreement unto NW TRANSPORT, its successors and assigns forever.

In consideration of the foregoing assignment, NW TRANSPORT hereby accepts the assignment and agrees to assume, perform and comply with all of the terms and conditions of the Access Agreement that are required to be performed or complied with by BFT. Additionally, NW TRANSPORT agrees to hold BFT, its officers, directors, trustees, employees and agents harmless against any claim, liability or action of any kind with respect to the Access Agreement and this Assignment and Assumption of Access Agreement.

This Assignment and Assumption of Access Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns. Additionally, NW TRANSPORT agrees to comply with applicable law.

EXECUTED effective April 17, 1995.

BAPTIST FOUNDATION OF TEXAS,



By: Wayne Cherry
Wayne Cherry, Vice President

ASSIGNOR

ACCEPTED:

NW TRANSPORT SERVICE, INC.

By: William R Ward
William R. Ward, Senior Vice President

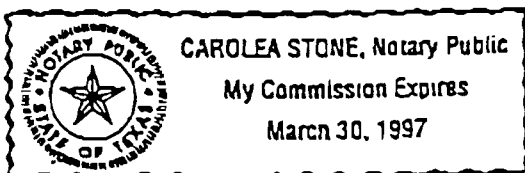
ASSIGNEE

STATE OF TEXAS

COUNTY OF DALLAS

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§
§

This instrument was acknowledged before me on the 17th day of April, 1994, by Wayne Cherry, Vice President of Baptist Foundation of Texas, a Texas nonprofit corporation, on behalf of said corporation.



Carolea Stone
Notary Public, State of Texas

STATE OF ~~TEXAS~~ COLORADOCOUNTY OF DENVER§
§
§

This instrument was acknowledged before me on the 14th day of April, 1994, by William R. Ward, Senior Vice President of NW Transport Service, Inc., a Colorado corporation, on behalf of said corporation.

My commission expires:
August 27, 1996

Christine J. Terry
Notary Public, State of ~~Texas~~ Colorado
Notary's printed name:
Christine J. Terry

EXHIBIT "A"

FIELD NOTES:

BEING 22.505 acres of land in the S.M. Harris Survey, Abstract No. 327, City of Houston, Harris County, Texas, being part of the land conveyed to Gene Whitehead by deed dated October 8, 1963, recorded in Volume 5308, Page 535, Deed Records of Harris County, Texas, and part of the land conveyed to Gene Whitehead by deed dated December 24, 1962, recorded in Volume 4973, Page 64, Deed Records of Harris County, Texas, and being more particularly described as follows:

COMMENCING at an iron rod in the north line of said Harris Survey located 100 feet east of its northwest corner, said iron rod being in the east right of way line of the H. B. & T. Railroad;

THENCE S.00°11'10"E. 264.66 feet along the east right way line of the H. B. & T. Railroad to an iron rod in the south line of Cavalcade Street 2.5 feet south of a cyclone fence corner, and the PLACE OF BEGINNING;

THENCE N.89°41'00"E. 146.06 feet along the south line of Cavalcade Blvd. to a P.K. nail in a cyclone fence at the beginning of a curve to the right;

THENCE along a curve to the right generally following a cyclone fence and being the south line of said Cavalcade Blvd, having a radius of 1854.86 feet, a central angle of 14°46'08" and an arc distance of 478.12 feet to a 5/8" iron rod;

THENCE S.75°27'00"E. 45.11 feet along the south line of Cavalcade Blvd to a 5/8" iron rod in the west line of the I. & G.N. Railroad;

THENCE S.02°32'00"E. 40.77 feet along the west line of the I. & G. N. Railroad to a 5/8" iron rod;

THENCE S.11°11'27"E. 1201.68 feet along the west line of said I. & G. N. Railroad and a cyclone fence to a 5/8" iron rod in a cyclone fence corner;

THENCE S.89°56'13"W. 893.73 feet along a cyclone fence to a 3/4" iron pipe in a cyclone fence corner and the east line of a H. B. & T. Railroad right of way;

THENCE N.00°11'10"W. 1289.68 feet along a cyclone fence and the east right of way line of the H. B. & T. Railroad to a 5/8" iron rod 2.5 feet south of a cyclone fence corner and the PLACE OF BEGINNING.

EXHIBIT "B"UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS1992 JAN - 8 PM 2:45
REGIONAL ADMINISTRATOR
EPA REGION 6
DALLAS, TEXAS

IN THE MATTER OF)

) REX KING and MARILYN LEE KING,
) PALLETIZED TRUCKING, INC.,
) BAPTIST FOUNDATION OF TEXAS,
) MERCHANTS FAST MOTOR LINES, INC.,
) and TRUCKING PROPERTIES, INC.,
)) RESPONDENTS
)) REGARDING THE
)) SOUTH CAVALCADE STREET SUPERFUND
) SITE
) HOUSTON, HARRIS COUNTY, TEXAS
)DOCKET NUMBER
CERCLA 6-08-92) Proceeding Under the Authority of
) Section 122(g)(4) of the
) Comprehensive Environmental
) Response, Compensation, and
) Liability Act of 1980, as Amended,
) 42 U.S.C. § 9622(g)(4)
)ADMINISTRATIVE ORDER
ON CONSENTI. JURISDICTION

1. This Administrative Order on Consent ("Consent Order") is issued and entered into pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), Pub. L. No. 99-499, 42 U.S.C. 9622(g)(4), to reach settlements in actions under Section 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a) in matters involving de minimis parties. The authority vested in the President has been delegated to the Administrator of EPA by Executive Order 12580, 52 FR 2923 (Jan. 29, 1987) and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-E (Sept. 13, 1987).

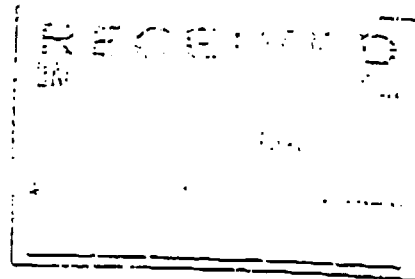
2. This Consent Order is issued to and entered into by Trucking Properties, Inc. (successor by change of corporate name to Merchants, Inc.), a corporation organized under the laws of the State of Delaware; Merchants Fast Motor Lines, Inc. ("Merchants Fast"), a corporation organized under the laws of the State of Delaware; Baptist Foundation of Texas, a non-profit corporation organized under the Texas Non-Profit Corporation Act; and Mr. Rex King, Mrs. Marilyn Lee King, and Palletized Trucking, Inc., a corporation organized under the laws of the State of Texas ("Respondents").

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EXHIBIT "B"

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

Calvin Reeves
Vice President and General Counsel
Baptist Foundation of Texas
2001 Bryan, Suite 1500
Dallas, Texas 75201-3082

Dear Mr. Reeves:

Pursuant to Section 122(i) of CERCLA, 42 U.S.C. 9622(i), and Section XVII of the Administrative Order on Consent (Docket Number CERCLA 6-08-92) for the South Cavalcade Street Superfund site, the Environmental Protection Agency (EPA) solicited public comment for a period of 30 days on the above referenced settlement agreement. The public comment period expired on July 9, 1992. No comments were received requiring any modification to the proposed settlement as of the date of this letter.

By this letter, I am transmitting an executed copy of the Consent Order for your records. Furthermore, in accordance with Section XIX of the Consent Order, the effective date of the agreement is the date of this letter.

Sincerely,

B. J. Wynne
Regional Administrator

Enclosure

cc: Steve Chong
Texas Water Commission

Shannon Craig
Beazer East, Inc.

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EXHIBIT "C"

ACCESS AGREEMENT

South Cavalcade Site
Houston, Texas

INTRODUCTION

This Access and Settlement Agreement ("Agreement") is made and entered into as of the Effective Date set forth below by and between Beazer East, Inc. ("Beazer"), a Delaware corporation, Trucking Properties, Inc. ("Trucking Properties" formerly known as Meridian Transport Company and Merchants, Inc.), a Delaware corporation, Mr. and Mrs. Rex King (the "Kings"), Palletized Trucking, Inc. ("Palletized"), a Texas corporation, and The Baptist Foundation of Texas (the "Foundation"), a Texas non-profit corporation, each of the foregoing corporations acting herein by and through their respective duly authorized officer or representative. Trucking Properties, the Kings, Palletized, and the Foundation are hereinafter sometimes collectively referred to as the "Landowners" or individually as a "Landowner."

RECITALS

Beginning in November, 1910, National Lumber and Creosoting Company ("National Lumber") acquired an approximately 55 acre tract of land in Harris County, Texas, which is contained in the area defined as the Site in Paragraph 2(j) below. National Lumber operated a creosoting facility on the 55 acre tract until approximately on or about October 1, 1938. Wood Preserving Corporation operated a creosoting facility on the Site from 1938 to 1940. Koppers Company, Inc. ("Koppers") acquired Wood Preserving Corporation on or about December 31, 1940, and operated a wood preserving and coal distillation facility on the Site until approximately 1962, when Koppers ceased operations and dismantled the facility. Beazer is the corporate successor to Koppers.

After the wood preserving and coal tar distillation operations had ceased, the current owners acquired their respect interests in the Site. Merchants Fast Motor Lines, Inc. acquired the Merchants Tract on or about November 7, 1962, from Koppers. Rex King acquired the King Tract on or about October 26, 1977, from Collingsworth Properties, Inc. The Foundation acquired the Foundation Tract on or about February 24, 1970, from Transcon Lines. Portions of the Site are now used by two commercial trucking companies, Palletized Trucking, Inc. and Northwest Transport, Inc.

Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, the United States Environmental Protection Agency ("EPA") placed the Site on the National Priorities List set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on June 10, 1986, 50 Fed. Reg. 21070. EPA has alleged that hazardous substances, as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been or are threatened to be released into the environment at or from the Site. Beazer performed a remedial investigation and feasibility study ("RI/FS") with

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